

NO. 43167-0

**COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

CHARLES V. FARNSWORTH, APPELLANT

**Appeal from the Superior Court of Pierce County
The Honorable Garold E. Johnson**

No. 09-1-04643-5

Supplemental Brief of Respondent

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A. SUPPLEMENTAL ISSUE STATEMENT PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Where California's vehicular manslaughter statute is narrower than its Washington counterpart, did the trial court err when it ruled that the defendant's 1984 California vehicular manslaughter conviction was comparable to vehicular homicide and thus a prior most serious offense?

B. INTRODUCTION.

The defendant's original assignments of error included several issues stemming from the trial court's persistent offender rulings. *See* Appellant's Supplemental Opening Brief, §§ C 2 through 4. The issues included comparability of a California vehicular manslaughter conviction and constitutional challenges to the persistent offender statute. *Id.* The state's response brief addressed each of the assignments of error. Brief of Respondent, § C-2. Those issues were not decided on the merits. *State v. Farnsworth*, 184 Wn. App. 305, 348 P.3d 759 (2014) (Unpublished text, § II.).

Following remand from the Supreme Court, the persistent offender issues are now before this court. *See State v. Farnsworth*, 185 Wn.2d 768, 789, 374 P.3d 1152 (2016). Having obtained leave from this Court to file a supplemental brief, the defendant confined his discussion to the comparability issue. Because the state's original response brief adequately

addressed the constitutional issues, this supplemental brief will be confined to a discussion of comparability.

C. ARGUMENT.

1. THE CRIME FOR WHICH THE DEFENDANT WAS CONVICTED IN 1984 IN CALIFORNIA IS COMPARABLE TO VEHICULAR HOMICIDE IN WASHINGTON BECAUSE IT IS MORE NARROW THAN VEHICULAR HOMICIDE.

To determine whether a prior out-of-state conviction counts as most serious offense under Washington’s persistent offender statute, a court must determine if there is a Washington offense “to which the out-of-state conviction is ‘comparable.’ ” *State v. Jones*, 183 Wn.2d 327, 345, 352 P.3d 776 (2015), quoting RCW 9.94A.525(3) and citing *State v. Ford*, 137 Wn.2d 472, 479–80, 973 P.2d 452 (1999). The legislature’s use of the term “comparable” has been interpreted to “require ‘substantial[] similar[ity]’ between the elements of the foreign offense and the Washington offense.” *State v. Jordan*, 180 Wn.2d 456, 461, 325 P.3d 181, 183–84 (2014), quoting *In re Pers. Restraint of Lavery*, 154 Wn.2d 249, 255, 111 P.3d 837 (2005), and citing *State v. Thieffault*, 160 Wn.2d 409, 415, 158 P.3d 580 (2007), and *State v. Sublett*, 176 Wn.2d 58, 87, 292 P.3d 715 (2012) (lead opinion).

Grammatically speaking, comparable is not the same as identical. Exact duplication is not required. *State v. Berry*, 141 Wn.2d 121, 130–31, 5 P.3d 658, 663 (2000) “The goal is to match the out-of-state crime to the

comparable Washington crime and ‘to treat a person convicted outside the state as if he or she had been convicted in Washington.’ ” *Id.*, quoting *State v. Cameron*, 80 Wn. App. 374, 378, 909 P.2d 309 (1996). Moreover where the out-of-state offense is more narrowly defined compared to a substantially similar Washington offense, the comparability analysis is complete and the two offenses are deemed comparable. *State v. Latham*, 183 Wn. App. 390, 396–98, 335 P.3d 960 (2014), *State v. Arndt*, 179 Wn. App. 373, 379, 320 P.3d 104 (2014), and *State v. Tewee*, 176 Wn. App. 964, 968, 309 P.3d 791 (2013).

In the case before the court the California offense is the more narrow of the two. Both offenses were adopted in 1983. Appendices A and B, Washington Laws, 1983, Ch. 164, § 1(1). California Statutes, 1983, Ch. 937, § 1(3)(c). For clarity the discussion below will refer to each state’s 1983 session law because a number of amendments have been passed in the past thirty-three years since the defendant was convicted of the California offense. *See* RCW 46.56.040, Historical and Statutory Notes. California Penal Code § 192, Historical and Statutory Notes. Side by side the two offenses were defined as of 1984 as follows:

Table 1.

Washington Laws, 1983, Ch. 164, § 1(1):	California Statutes, 1983, Ch. 937, § 1(3)(c):
(1) When the death of any person	Manslaughter is the unlawful

ensues within three years as a proximate result of injury proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug, as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner or with disregard for the safety of others, the person so operating such vehicle is guilty of vehicular homicide.	<p>killing of a human being without malice. It is of three kinds:</p> <p style="text-align: center;">* * *</p> <p>3. Vehicular –</p> <p style="text-align: center;">* * *</p> <p>(c) Driving a vehicle in violation of Section 23152 or 23153 of the Vehicle Code [the driving while intoxicated sections of the California motor vehicle code] and in the commission of an unlawful act, not amounting to a felony, and with gross negligence; or driving a vehicle in violation of Section 23152 or 23153 of the Vehicle Code and in the commission of a lawful act which might produce death, in an unlawful manner, and with gross negligence.</p>
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These two statutes are admittedly not identical but they are comparable. First, both offenses required a death. California defined the death element as “the unlawful killing of a human being” while Washington defined it as “the death of any person ensues”. Appendices A and B. Second, both offenses required proximate cause; Washington’s requirement was included in its statutory vehicular homicide definition, California’s was included in the cross-referenced driving under the influence (“DUI”) provisions, namely California Motor Vehicle Code §§ 23152 and 23153, and by case law. *People v. Schmies*, 44 Cal. App. 4th 38, 46–47, 51 Cal. Rptr. 2d 185, 190 (1996) (“Just as in tort law, the defendant's act must be the legally responsible cause (‘proximate cause’)

of the injury, death or other harm which constitutes the crime.”), quoting 1 Witkin & Epstein, Cal. Criminal Law (2d ed. 1988) Elements of Crime, § 126, pp. 145–146. (emphasis in the original.) Third, both offenses had a three year death requirement; Washington’s was three years exactly and California’s was three years and a day. Former California Penal Code § 194, Historical and Statutory Notes.¹

Comparability is further evidenced by the primary thrust of the two statutes. Both states sought harsher punishment for those who kill while driving under the influence. As to the DUI elements both states cross referenced the DUI sections of their respective motor vehicle codes. Appendices A and B. In both Washington and California in 1984, the DUI statutes criminalized the operation of a vehicle either while the person is under the influence of alcohol or drugs, or with an alcohol concentration of .10 or higher as shown by a breath or blood test. Washington Laws, 1979 ex. sess. Ch. 176 § 1. Appendix B. *See* California Motor Vehicle Code Ann. §§ 23152 and 23153, Historical and Statutory Notes.

Although the two statutes are quite similar, there were two differences of note. The first was the element of gross negligence in the

¹ California’s statute was amended in 1996 to include a rebuttable presumption in case of a death “beyond the time of three years and a day” California Statutes, 1996, Ch. 937, § 1(3)(c).

California statute. As is evident from the above comparison, Washington does not include a gross negligence element nor any other *mens rea* requirement. See *State v. Tang*, 75 Wn. App. 473, 479, 878 P.2d 487 (1994) (“In addition, the analysis breaks down when applied to the DWI means of committing the crime because there is no *mens rea* element for that means of committing vehicular homicide. Driving while intoxicated is a strict liability crime in which the defendant's mental state is irrelevant.”), *affirmed on reconsideration*, 77 Wn. App. 644, 893 P.2d 646 (1995). Thus it can be said that for purposes of comparability the California statute is more narrow than the Washington statute because it does require *mens rea*.

The second difference is the “unlawful act” requirement in California. The Washington Statute has no such requirement. As enacted it created somewhat of a strict liability offense. In its interpretation of the 1983 version of the statute, the Washington Supreme Court ameliorated the harshness of strict liability by interpreting the statute as including a causation requirement: “A literal reading of the statute would not require that the influence of intoxicating liquor on the defendant be a proximate cause of the ensuing death. Nevertheless, to avoid a ‘strict liability’ result, this court and the Court of Appeals have engrafted on the statute, and have consistently held, that impairment due to alcohol must be a proximate

cause of the fatal accident.” *State v. MacMaster*, 113 Wn.2d 226, 231, 778 P.2d 1037, 1040 (1989). *See State v. Rivas*, 126 Wn.2d 443, 452, 896 P.2d 57, 61 (1995) (“The *MacMaster* causal element was added by the court because of its concern with the strict liability results of a literal reading of that statute.”). Prior to 1991, the Washington statute did not require a legal causation link between the intoxicated driving and the death. *Id.* While under *MacMaster*, legal causation was added as a non-statutory element, there was no additional requirement of an “unlawful act, not amounting to a felony”. *Id.* *See* Appendix B. In short, the act of driving under the influence was sufficient of itself in Washington. *Id.*

In light of the foregoing, it cannot be said that the trial court erred in its analysis of comparability. There is abundant support in the two statutes for the trial court’s conclusion that, “As a result of the legal comparison of the statutes, this Court finds the California Vehicular Manslaughter conviction is comparable to the Washington statute in effect January 18, 1984, the date of [the defendant’s] California offense.” CP 704. In two respects, namely the California “gross negligence” and “unlawful act” elements, the California statute is narrower than its Washington counterpart. That circumstance adds further support to the trial court’s judgment under the legal comparison.

2. ALTHOUGH NOT NECESSARY, THE TRIAL COURT'S FACTUAL COMPARABILITY ANALYSIS WAS NOT ERRONEOUS IN LIGHT OF THE EVIDENCE INTRODUCED AT THE SENTENCING HEARING.

Factual comparability involves a comparison of the facts, that is the defendant's conduct with the elements of the Washington offense. *State v. Latham*, 183 Wn. App. 390, 396–98, 335 P.3d 960 (2014), *State v. Arndt*, 179 Wn. App. 373, 379, 320 P.3d 104 (2014), and *State v. Tewee*, 176 Wn. App. 964, 968, 309 P.3d 791 (2013). “Offenses are factually comparable if the defendant's conduct constituting the foreign offense, as evidenced by the undisputed facts in the foreign record, would constitute the Washington offense. . . In this inquiry into factual comparability, the trial court can consider only facts proven to a trier of fact beyond a reasonable doubt or those to which the defendant admitted or stipulated. . . The State bears the burden of providing sufficient evidence to prove by a preponderance of the evidence that a foreign offense is comparable to a Washington offense. . . .” *State v. Latham*, 183 Wn. App. at 397 (citations omitted).

In this case, the state's evidence at the sentencing hearing included sixteen exhibits from four states and the federal bureau of prisons. CP 860-61. Of those exhibits, six were submitted related to the California vehicular manslaughter conviction. Those exhibits were supplemented by

the state's sentencing memorandum and a supporting declaration. CP 831-852, 853-859. Those materials provided abundant support for the trial courts conclusion that, "Even engaging in a factual comparison, the State has also proven the defendant's actions or conduct in 1984 would be factually sufficient to sustain a conviction of Vehicular Homicide in Washington." CP 705.

The trial court included in its findings and conclusions a reference to the charging language from the felony Complaint to which the defendant pled guilty. *See* CP 705, 846. The operable language from the Complaint accused the defendant as follows:

"[The defendant] committed the crime of violation of section 192(3)(c) of the Penal Code . . . in that on or about January 18, 1984. . .

* * *

Said complainant further accuses [the defendant] of committing the crime of violation of section 23153(a) of the Vehicle Code, a felony, in that on or about January 18, 1984, in Ventura County, California, he did willfully and unlawfully, while under the influence of an alcoholic beverage and a drug and under their combined influence, drive a vehicle and in so driving did commit and act forbidden by law, to-wit, passing without sufficient clearance, a violation of Vehicle Code section 21751, in the driving of said vehicle which proximately caused death and bodily injury to Teresa Ramirez."

CP 757.

The trial court was permitted to consider the charging document in its factual comparison. "The sentencing court can look at the charging

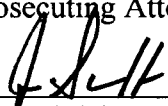
instrument from the foreign proceeding, but it cannot consider ‘facts and allegations contained in [the] record of prior proceedings, if not directly related to the elements.’ ” *State v. Jones*, 183 Wn.2d 327, 345–46, 352 P.3d 776 (2015), quoting *State v. Ford*, 137 Wn.2d 472, 480, 973 P.2d 452 (1999), citing *State v. Morley*, 134 Wn.2d 588, 606, 952 P.2d 167 (1998). It thus committed no error by considering the elements of the California offense in light of the specific facts of the 1984 case to arrive at its conclusion that the California offense was factually comparable to vehicular homicide in Washington.

D. CONCLUSION.

For the foregoing reasons the state respectfully requests that the defendant’s persistent offender sentence be affirmed.

DATED: Thursday, December 29, 2016.

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Certificate of Service:

The undersigned certifies that on this day she delivered by ~~U.S. mail~~ or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

12-29-16 

Date Signature

APPENDIX “A”

modify the commission's revision or amendment at the next legislative session after the revision or amendment takes effect. Failure of the legislature to act shall be deemed as approval of the revision or amendment;

(2) If the emergency occurs prior to July 1, 1988, call the board of prison terms and paroles into an emergency meeting for the purpose of evaluating its guidelines and procedures for release of prisoners. The board may take any action authorized by law to modify the terms of prisoners under its jurisdiction;

(3) Call the clemency and pardons board into an emergency meeting for the purpose of recommending whether the governor's commutation or pardon power should be exercised to meet the present emergency.

NEW SECTION. Sec. 5. There is added to chapter 9.94A RCW a new section to read as follows:

The commission shall conduct an analysis of the anticipated effects of the guidelines adopted in chapter ... (SB 3414), Laws of 1983, on a representative sample of counties. This analysis shall include, but not be limited to, an estimate of the impact on jail population and availability of alternatives in the community. The analysis required by this section shall be filed at the beginning of the 1984 legislative session.

NEW SECTION. Sec. 6. The legislative budget committee shall prepare a report to be filed at the beginning of the 1987 session of the legislature. The report shall include a complete assessment of the impact of the Sentencing Reform Act of 1981. Such report shall include the effectiveness of the guidelines and impact on prison and jail populations and community correction programs.

NEW SECTION. Sec. 7. Sections 1 through 5 of this act shall take effect on July 1, 1984.

Passed the Senate April 23, 1983.

Passed the House April 11, 1983.

Approved by the Governor May 11, 1983.

Filed in Office of Secretary of State May 11, 1983.

CHAPTER 164

[Engrossed Senate Bill No. 3106]

DRUNK DRIVING—VEHICULAR HOMICIDE—VEHICULAR ASSAULT

AN ACT Relating to driving while intoxicated; amending section 3, chapter 137, Laws of 1981, as last amended by section 1, chapter ____ (ESB 3416), Laws of 1983 and RCW 9.94A.030; amending section 24, chapter 121, Laws of 1965 ex. sess. and RCW 46.20.285; amending section 1, chapter 5, Laws of 1973 as amended by section 13, chapter 61, Laws of 1979 and RCW 46.20.391; amending section 1, chapter 120, Laws of 1963 and RCW 46.21.010; amending section 46.56.040, chapter 12, Laws of 1961 as last amended by section 3, chapter 287, Laws of 1975 1st ex. sess. and RCW 46.61.520; amending section 12, chapter 10, Laws of 1982 and RCW 46.63.020; amending section 4, chapter 284, Laws of 1971 ex. sess. as last amended by section 1, chapter 188, Laws of 1981 and RCW

46.65.020; amending section 46.72.100, chapter 12, Laws of 1961 as amended by section 86, chapter 32, Laws of 1967 and RCW 46.72.100; adding a new section to chapter 46.61 RCW; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 46.56.040, chapter 12, Laws of 1961 as last amended by section 3, chapter 287, Laws of 1975 1st ex. sess. and RCW 46.61.520 are each amended to read as follows:

(1) When the death of any person ~~((shall))~~ ensues within three years as a proximate result of injury ~~((received))~~ proximately caused) by the driving of any vehicle by any person while under the influence of ~~((or-affected by))~~ intoxicating liquor or ~~((drugs))~~ any drug, as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner or with disregard for the safety of others, the person so operating such vehicle ~~((shall be))~~ is guilty of ~~((negligent))~~ vehicular homicide ~~((by means of a motor vehicle))~~.

(2) ~~((Any person convicted of negligent homicide by means of a motor vehicle shall be punished by imprisonment in the state penitentiary for not more than ten years, or by imprisonment in the county jail for not more than one year, or by fine of not more than one thousand dollars, or by both fine and imprisonment))~~ Vehicular homicide is a class B felony punishable under chapter 9A.20 RCW.

NEW SECTION. Sec. 2. There is added to chapter 46.61 RCW a new section to read as follows:

(1) A person is guilty of vehicular assault if he operates or drives any vehicle:

(a) In a reckless manner, and this conduct is the proximate cause of serious bodily injury to another; or

(b) While under the influence of intoxicating liquor or any drug, as defined by RCW 46.61.502, and this conduct is the proximate cause of serious bodily injury to another.

(2) "Serious bodily injury" means bodily injury which involves a substantial risk of death, serious permanent disfigurement, or protracted loss or impairment of the function of any part or organ of the body.

(3) Vehicular assault is a class C felony punishable under chapter 9A.20 RCW.

**Sec. 3. Section 24, chapter 121, Laws of 1965 ex. sess. and RCW 46.20.285 are each amended to read as follows:*

The department shall forthwith revoke the license of any driver upon receiving a record of ~~((such))~~ the driver's conviction of any of the following offenses, when ~~((such))~~ the conviction has become final:

(1) ~~((Manslaughter (or negligent))~~ Vehicular homicide((i)) or vehicular assault resulting from the operation of a motor vehicle,

(2) Driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug, or under the influence of any other drug to a degree which

renders him incapable of safely driving a motor vehicle, upon a showing by the department's records that the conviction is the third such conviction ((of such)) for the driver within a period of five years;

(3) Any felony in the commission of which a motor vehicle is used;

(4) Failure to stop and give information or render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another;

(5) Perjury or the making of a false affidavit or statement under oath to the department under Title 46 RCW or under any other law relating to the ownership or operation of motor vehicles;

(6) Reckless driving upon a showing by the department's records that the conviction is the third such conviction ((of such)) for the driver within a period of two years.

*Sec. 3. was vetoed, see message at end of chapter.

Sec. 4. Section 1, chapter 5, Laws of 1973 as amended by section 13, chapter 61, Laws of 1979 and RCW 46.20.391 are each amended to read as follows:

(1) Any person licensed under this chapter who is convicted of an offense relating to motor vehicles for which suspension or revocation of the driver's license is mandatory, other than ((negligent)) vehicular homicide or vehicular assault, may petition the court for a stay of the effect of the mandatory suspension or revocation for the purpose of submitting to the department an application for an occupational driver's license. The court upon determining that the petitioner is engaged in an occupation or trade which makes it essential that the petitioner operate a motor vehicle may stay the effect of the mandatory suspension or revocation, notwithstanding RCW 46.20.270, for a period of not more than thirty days and may set definite restrictions as to hours of the day which may not exceed twelve hours in any one day, days of the week, type of occupation, and areas or routes of travel permitted under the occupational driver's license.

(2) An applicant for an occupational driver's license is eligible to receive such license only if:

(a) Within one year immediately preceding the present conviction the applicant has not been convicted of any offense relating to motor vehicles for which suspension or revocation of a driver's license is mandatory; and

(b) Within five years immediately preceding the present conviction the applicant has not been convicted more than once of driving or being in actual physical control of a motor vehicle while under the influence of intoxicating liquor under RCW 46.61.502 or 46.61.504, of vehicular homicide under RCW 46.61.520, or of vehicular assault under section 2 of this act; and

(c) The applicant is engaged in an occupation or trade which makes it essential that he or she operate a motor vehicle; and

~~((c))~~ (d) The applicant files satisfactory proof of financial responsibility pursuant to chapter 46.29 RCW.

(3) The department, upon receipt of an application and the prescribed fee, may issue an occupational driver's license to any person eligible under this section for a period of not more than one year which permits the operation of a motor vehicle only within the limits established by the court and only when the operation is essential to the licensee's occupation or trade.

(4) The director shall cancel an occupational driver's license upon receipt of notice that the holder thereof has been convicted of operating a motor vehicle in violation of its restrictions, or of an offense which pursuant to chapter 46.20 RCW would warrant suspension or revocation of a regular driver's license. ~~((Such))~~ The cancellation ~~((shall be))~~ is effective as of the date of ~~((such))~~ the conviction, and ~~((shall))~~ continues with the same force and effect as any suspension or revocation under this title.

Sec. 5. Section 1, chapter 120, Laws of 1963 and RCW 46.21.010 are each amended to read as follows:

The driver license compact prepared pursuant to resolutions of the western governors' conference and the western interstate committee on highway policy problems of the council of state governments is hereby entered into and enacted into law, the terms and provisions of which shall be as follows:

DRIVER LICENSE COMPACT

ARTICLE I—Findings and Declaration of Policy

(a) The party states find that:

(1) The safety of their streets and highways is materially affected by the degree of compliance with state laws and local ordinances relating to the operation of motor vehicles.

(2) Violation of such a law or ordinance is evidence that the violator engages in conduct which is likely to endanger the safety of persons and property.

(3) The continuance in force of a license to drive is predicated upon compliance with laws and ordinances relating to the operation of motor vehicles, in whichever jurisdiction the vehicle is operated.

(b) It is the policy of each of the party states to:

(1) Promote compliance with the laws, ordinances, and administrative rules and regulations relating to the operation of motor vehicles by their operators in each of the jurisdictions where such operators drive motor vehicles.

(2) Make the reciprocal recognition of licenses to drive and eligibility therefor more just and equitable by considering the over-all compliance with motor vehicle laws, ordinances and administrative rules and regulations as a condition precedent to the continuance or issuance of any license by

reason of which the licensee is authorized or permitted to operate a motor vehicle in any of the party states.

ARTICLE II—Definitions

As used in this compact:

(a) "State" means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(b) "Home state" means the state which has issued and has the power to suspend or revoke the use of the license or permit to operate a motor vehicle.

(c) "Conviction" means a conviction of any offense related to the use or operation of a motor vehicle which is prohibited by state law, municipal ordinance or administrative rule or regulation, or a forfeiture of bail, bond or other security deposited to secure appearance by a person charged with having committed any such offense, and which conviction or forfeiture is required to be reported to the licensing authority.

ARTICLE III—Reports of Conviction

The licensing authority of a party state shall report each conviction of a person from another party state occurring within its jurisdiction to the licensing authority of the home state of the licensee. Such report shall clearly identify the person convicted; describe the violation specifying the section of the statute, code or ordinance violated; identify the court in which action was taken; indicate whether a plea of guilty or not guilty was entered, or the conviction was a result of the forfeiture of bail, bond or other security; and shall include any special findings made in connection therewith.

ARTICLE IV—Effect of Conviction

(a) The licensing authority in the home state, for the purposes of suspension, revocation or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported, pursuant to Article III of this compact, as it would if such conduct had occurred in the home state, in the case of convictions for:

(1) ~~((Manslaughter or negligent))~~ Vehicular homicide ~~((resulting from the operation of a motor vehicle))~~;

(2) Driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug, or under the influence of any other drug to a degree which renders the driver incapable of safely driving a motor vehicle;

(3) Any felony in the commission of which a motor vehicle is used;

(4) Failure to stop and render aid in the event of a motor vehicle accident resulting in the death or personal injury of another.

(b) If the laws of a party state do not provide for offenses or violations denominated or described in precisely the words employed in subdivision (a) of this Article, such party state shall construe the denominations and descriptions appearing in subdivision (a) hereof as being applicable to and

identifying those offenses or violations of a substantially similar nature and the laws of such party state shall contain such provisions as may be necessary to ensure that full force and effect is given to this Article.

ARTICLE V—Applications for New Licenses

Upon application for a license to drive, the licensing authority in a party state shall ascertain whether the applicant has ever held, or is the holder of a license to drive issued by any other party state. The licensing authority in the state where application is made shall not issue a license to drive to the applicant if:

(1) The applicant has held such a license, but the same has been suspended by reason, in whole or in part, of a violation and if such suspension period has not terminated.

(2) The applicant has held such a license, but the same has been revoked by reason, in whole or in part, of a violation and if such revocation has not terminated, except that after the expiration of one year from the date the license was revoked, such person may make application for a new license if permitted by law. The licensing authority may refuse to issue a license to any such applicant if, after investigation, the licensing authority determines that it will not be safe to grant to such person the privilege of driving a motor vehicle on the public highways.

(3) The applicant is the holder of a license to drive issued by another party state and currently in force unless the applicant surrenders such license.

ARTICLE VI—Applicability of Other Laws

Except as expressly required by provisions of this compact, nothing contained herein shall be construed to affect the right of any party state to apply any of its other laws relating to licenses to drive to any person or circumstance, nor to invalidate or prevent any driver license agreement or other cooperative arrangement between a party state and a non-party state.

ARTICLE VII—Compact Administrator and Interchange of Information

(a) The head of the licensing authority of each party state shall be the administrator of this compact for his state. The administrators, acting jointly, shall have the power to formulate all necessary and proper procedures for the exchange of information under this compact.

(b) The administrator of each party state shall furnish to the administrator of each other party state any information or documents reasonably necessary to facilitate the administration of this compact.

ARTICLE VIII—Entry into Force and Withdrawal

(a) This compact shall enter into force and become effective as to any state when it has enacted the same into law.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until six months after the executive head of the withdrawing state has given notice of the withdrawal to the executive heads of all other party states. No withdrawal shall affect the validity or applicability by the licensing authorities of states remaining party to the compact of any report of conviction occurring prior to the withdrawal.

ARTICLE IX—Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

Sec. 6. Section 12, chapter 10, Laws of 1982 and RCW 46.63.020 are each amended to read as follows:

Failure to perform any act required or the performance of any act prohibited by this title or an equivalent administrative regulation or local law, ordinance, regulation, or resolution relating to traffic including parking, standing, stopping, and pedestrian offenses, is designated as a traffic infraction and may not be classified as a criminal offense, except for an offense contained in the following provisions of this title or a violation of an equivalent administrative regulation or local law, ordinance, regulation, or resolution:

(1) RCW 46.09.120(2) relating to the operation of a nonhighway vehicle while under the influence of intoxicating liquor or a controlled substance;

(2) RCW 46.09.130 relating to operation of nonhighway vehicles;

(3) RCW 46.10.090(2) relating to the operation of a snowmobile while under the influence of intoxicating liquor or narcotics or habit-forming drugs or in a manner endangering the person of another;

(4) RCW 46.10.130 relating to the operation of snowmobiles;

(5) Chapter 46.12 RCW relating to certificates of ownership and registration;

(6) RCW 46.16.160 relating to vehicle trip permits;

- (7) RCW 46.20.021 relating to driving without a valid driver's license;
- (8) RCW 46.20.336 relating to the unlawful possession and use of a driver's license;
- (9) RCW 46.20.342 relating to driving with a suspended or revoked license;
- (10) RCW 46.20.410 relating to the violation of restrictions of an occupational driver's license;
- (11) RCW 46.20.420 relating to the operation of a motor vehicle with a suspended or revoked license;
- (12) Chapter 46.29 RCW relating to financial responsibility;
- (13) RCW 46.44.180 relating to operation of mobile home pilot vehicles;
- (14) RCW 46.48.175 relating to the transportation of dangerous articles;
- (15) RCW 46.52.010 relating to duty on striking an unattended car or other property;
- (16) RCW 46.52.020 relating to duty in case of injury to or death of a person or damage to an attended vehicle;
- (17) RCW 46.52.090 relating to reports by repairmen, storagemen, and appraisers;
- (18) RCW 46.52.100 relating to driving under the influence of liquor or drugs;
- (19) RCW 46.52.108 relating to disposal of abandoned vehicles or hulks;
- (20) RCW 46.52.130 relating to confidentiality of the driving record to be furnished to an insurance company and an employer;
- (21) RCW 46.52.210 relating to abandoned vehicles or hulks;
- (22) RCW 46.61.015 relating to obedience to police officers, flagmen, or fire fighters;
- (23) RCW 46.61.020 relating to refusal to give information to or cooperate with an officer;
- (24) RCW 46.61.022 relating to failure to stop and give identification to an officer;
- (25) RCW 46.61.024 relating to attempting to elude pursuing police vehicles;
- (26) RCW 46.61.500 relating to reckless driving;
- (27) RCW 46.61.502 and 46.61.504 relating to persons under the influence of intoxicating liquor or drugs;
- (28) RCW 46.61.520 relating to ~~((negligent))~~ vehicular homicide by motor vehicle;
- (29) Section 2 of this act relating to vehicular assault;
- (30) RCW 46.61.525 relating to negligent driving;
- ~~((30))~~ (31) RCW 46.61.530 relating to racing of vehicles on highways;

~~((31))~~ (32) RCW 46.61.685 relating to leaving children in an unattended vehicle with the motor running;

~~((32))~~ (33) RCW 46.64.010 relating to unlawful cancellation of or attempt to cancel a traffic citation;

~~((33))~~ (34) RCW 46.64.020 relating to nonappearance after a written promise;

~~((34))~~ (35) RCW 46.64.048 relating to attempting, aiding, abetting, coercing, and committing crimes;

~~((35))~~ (36) Chapter 46.65 RCW relating to habitual traffic offenders;

~~((36))~~ (37) Chapter 46.70 RCW relating to unfair motor vehicle business practices, except where that chapter provides for the assessment of monetary penalties of a civil nature;

~~((37))~~ (38) Chapter 46.72 RCW relating to the transportation of passengers in for hire vehicles;

~~((38))~~ (39) Chapter 46.80 RCW relating to motor vehicle wreckers;

~~((39))~~ (40) Chapter 46.82 RCW relating to driver's training schools.

Sec. 7. Section 4, chapter 284, Laws of 1971 ex. sess. as last amended by section 1, chapter 188, Laws of 1981 and RCW 46.65.020 are each amended to read as follows:

As used in this chapter, unless a different meaning is plainly required by the context, an habitual offender ~~((shall))~~ means any person, resident or nonresident, who has accumulated convictions or findings that the person committed a traffic infraction as defined in RCW 46.20.270 ~~((as now or hereafter amended))~~, or, if a minor, ~~((shall have))~~ has violations recorded with the department of licensing, for separate and distinct offenses as described in either subsection (1) or (2) below committed within a five-year period, as evidenced by the records maintained in the department of licensing: PROVIDED, That where more than one described offense ~~((shall be))~~ is committed within a six-hour period such multiple offenses shall, on the first such occasion, be treated as one offense for the purposes of this chapter:

(1) Three or more convictions, singularly or in combination, of the following offenses:

(a) ~~((Negligent))~~ Vehicular homicide as defined in RCW 46.61.520;

(b) Vehicular assault as defined in section 2 of this act;

(c) Driving or operating a motor vehicle while under the influence of intoxicants or drugs;

~~((c))~~ (d) Driving a motor vehicle while his or her license, permit, or privilege to drive has been suspended or revoked;

~~((d))~~ (e) Failure of the driver of any vehicle involved in an accident resulting in the injury or death of any person or damage to any vehicle which is driven or attended by any person to immediately stop such vehicle at the scene of such accident or as close thereto as possible and to forthwith return to and in every event remain at, the scene of such accident until he

has fulfilled the requirements of RCW 46.52.020 ~~((as now or hereafter amended))~~;

~~((e))~~ (f) Reckless driving as defined in RCW 46.61.500 ~~((as now or hereafter amended))~~;

~~((f))~~ (g) Being in physical control of a motor vehicle while under the influence of intoxicating liquor or any drug as defined in RCW 46.61.504; or

~~((g))~~ (h) Attempting to elude a pursuing police vehicle as defined in RCW 46.61.024;

(2) Twenty or more convictions or findings that the person committed a traffic infraction for separate and distinct offenses, singularly or in combination, in the operation of a motor vehicle ~~((which))~~ that are required to be reported to the department of licensing other than the offenses of driving with an expired driver's license and not having a driver's license in the operator's immediate possession. Such convictions or findings shall include those for offenses enumerated in subsection (1) ~~((above))~~ of this section when taken with and added to those offenses described herein but shall not include convictions or findings for any nonmoving violation. No person may be considered an habitual offender under this subsection unless at least three convictions have occurred within the three hundred sixty-five days immediately preceding the last conviction.

The offenses included in subsections (1) and (2) ~~((hereof shall be))~~ of this section are deemed to include offenses under any valid town, city, or county ordinance substantially conforming to the provisions cited in ~~((said))~~ subsections (1) and (2) or amendments thereto, and any federal law, or any law of another state, including subdivisions thereof, substantially conforming to the aforesaid state statutory provisions.

Sec. 8. Section 46.72.100, chapter 12, Laws of 1961 as amended by section 86, chapter 32, Laws of 1967 and RCW 46.72.100 are each amended to read as follows:

The director may refuse to issue a permit or certificate, or he may suspend or revoke a permit or certificate if he has good reason to believe that one of the following is true of the operator or the applicant for a permit or certificate: (1) He has been convicted of an offense of such a nature as to indicate that he is unfit to hold a certificate or permit; (2) he is guilty of committing two or more offenses for which mandatory revocation of driver's license is provided by law; (3) he has been convicted of ~~((manslaughter resulting from the operation of a motor vehicle or convicted of negligent))~~ vehicular homicide or vehicular assault; (4) he is intemperate or addicted to the use of narcotics.

Notice of the director to refuse, suspend, or revoke ~~((such))~~ the permit or certificate shall be given by ~~((registered))~~ certified mail to the holder or applicant for ~~((such))~~ the permit or certificate and shall designate a time and place for a hearing before the director, which shall not be less than ten

days from the date of ~~((such))~~ the notice. ~~((Should))~~ If the director, after ~~((such))~~ the hearing, decides that a permit shall be canceled or revoked, he shall notify ~~((said))~~ the holder or applicant to that effect by ~~((registered))~~ certified mail. The applicant or permit holder may within thirty days from the date of the decision appeal to the superior court of Thurston county for a review of ~~((such))~~ the decision by filing a copy of ~~((said))~~ the notice with the clerk of ~~((said))~~ the superior court and a copy of ~~((such))~~ the notice in the office of the director. The court shall set the matter down for hearing with the least possible delay.

Any for hire operator ~~((as herein defined))~~ who ~~((shall))~~ operates a for hire vehicle ~~((as herein defined))~~ without first having filed a bond or insurance policy and having received a for hire permit and a for hire certificate as required by this chapter ~~((shall be))~~ is guilty of a gross misdemeanor, and upon conviction ~~((therefor))~~ shall be punished by imprisonment in jail for a period not exceeding ninety days or a fine of not exceeding five hundred dollars, or both fine and imprisonment.

Sec. 9. Section 3, chapter 137, Laws of 1981 as last amended by section 1, chapter ____ (ESB 3416), Laws of 1983 and RCW 9.94A.030 are each amended as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Commission" means the sentencing guidelines commission.

(2) "Community service" means compulsory service, without compensation, performed for the benefit of the community by the offender.

(3) "Community supervision" means a period of time during which a convicted offender is subject to crime-related prohibitions and other sentence conditions imposed pursuant to this chapter by a court. For first-time offenders, the supervision may include crime-related prohibitions and other conditions imposed pursuant to RCW 9.94A.120(5).

(4) "Confinement" means total or partial confinement as defined in this section.

(5) "Conviction" means an adjudication of guilt pursuant to Titles 10 or 13 RCW.

(6) "Crime-related prohibition" means an order of a court prohibiting conduct which directly relates to the circumstances of the crime for which the offender has been convicted, and shall not be construed to mean orders directing an offender affirmatively to participate in rehabilitative programs or to otherwise perform affirmative conduct.

(7)(a) "Criminal history" means the list of a defendant's prior convictions, whether in this state, in federal court, or elsewhere. The history shall include, where known, for each conviction (i) whether the defendant has been placed on probation and the length and terms thereof; and (ii) whether the defendant has been incarcerated and the length of incarceration.

(b) "Criminal history" includes a defendant's convictions or pleas of guilty in juvenile court if: (i) The guilty plea or conviction was for an offense which is a felony and is criminal history as defined in RCW 13.40.020(6)(a); and (ii) the defendant was fifteen years of age or older at the time the offense was committed; and (iii) the defendant was twenty-three years of age or less at the time the offense for which he or she is being sentenced was committed.

(8) "Department" means the department of corrections.

(9) "Determinate sentence" means a sentence which states with exactitude the number of actual years, months, or days of total confinement, of partial confinement, of community supervision, the number of actual hours or days of community service work, or dollars or terms of a fine or restitution. The fact that an offender through "earned early release" can reduce the actual period of confinement shall not affect the classification of the sentence as a determinate sentence.

(10) "Fines" means the requirement that the offender pay a specific sum of money over a specific period of time to the court.

(11) "First-time offender" means any person convicted of a felony not classified as a violent offense under this chapter, who previously has never been convicted of a felony in this state, federal court, or another state, and who has never participated in a program of deferred prosecution for a felony offense.

(12) "Offender" means a person who has committed a felony established by state law and is eighteen years of age or older or is less than eighteen years of age but whose case has been transferred by the appropriate juvenile court to a criminal court pursuant to RCW 13.40.110. Throughout this chapter, the terms "offender" and "defendant" are used interchangeably.

(13) "Partial confinement" means confinement for no more than one year in a facility or institution operated or utilized under contract by the state or any other unit of government, for a substantial portion of each day with the balance of the day spent in the community.

(14) "Restitution" means the requirement that the offender pay a specific sum of money over a specific period of time to the court as payment of damages. The sum may include both public and private costs. The imposition of a restitution order does not preclude civil redress.

(15) "Sentence range" means the sentencing court's discretionary range in imposing a nonappealable sentence.

(16) "Total confinement" means confinement inside the physical boundaries of a facility or institution operated or utilized under contract by the state or any other unit of government for twenty-four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

(17) "Violent offense" means:

(a) Any of the following felonies, as now existing or hereafter amended: Any felony defined under any law as a class A felony or an attempt to

commit a class A felony, criminal solicitation of or criminal conspiracy to commit a class A felony, manslaughter in the first degree, manslaughter in the second degree, indecent liberties if committed by forcible compulsion, rape in the second degree, kidnapping in the second degree, arson in the second degree, assault in the second degree, extortion in the first degree, ((and)) robbery in the second degree, and ((negligent)) vehicular homicide;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, which is comparable to a felony classified as a violent offense in subsection (17)(a) of this section; and

(c) Any federal or out-of-state conviction for an offense comparable to a felony classified as a violent offense under subsection (17)(a) or (b) of this section.

Passed the Senate April 22, 1983.

Passed the House April 17, 1983.

Approved by the Governor May 11, 1983, with the exception of section 3, which is vetoed.

Filed in Office of Secretary of State May 11, 1983.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 3, Engrossed Senate Bill No. 3106, entitled:

"AN ACT Relating to driving while intoxicated."

This bill establishes the crimes of vehicular homicide and vehicular assault and provides for penalties for those crimes.

It is necessary to veto section 3 of ESB 3106 in order to avoid a double amendment to RCW 46.20.285, which was also amended in a more complete manner in section 15 of Engrossed Substitute House Bill No. 289, a bill that I will sign today.

With the exception of section 3, which I have vetoed, Engrossed Senate Bill No. 3106 is approved."

CHAPTER 165

[Engrossed Substitute House Bill No. 289]

DRUNK DRIVING—PROCEDURES AND PENALTIES MODIFIED

AN ACT Relating to driving while intoxicated; amending section 11, chapter 260, Laws of 1981 as amended by section 1 of this act and RCW 46.20.308; amending section 46.04.480, chapter 12, Laws of 1961 as amended by section 7, chapter 62, Laws of 1979 and RCW 46.04.480; amending section 46.04.480, chapter 12, Laws of 1961 as last amended by section 13 of this act and RCW 46.04.480; amending section 24, chapter 121, Laws of 1965 ex. sess. and RCW 46.20.285; amending section 24, chapter 121, Laws of 1965 ex. sess. as amended by section 15 of this act and RCW 46.20.285; amending section 27, chapter 121, Laws of 1965 ex. sess. as last amended by section 5, chapter 212, Laws of 1982 and RCW 46.20.311; amending section 27, chapter 121, Laws of 1965 ex. sess. as last amended by section 17 of this act and RCW 46.20.311; amending section 62, chapter 155, Laws of 1965 ex. sess. as last amended by section 1, chapter ... (SHB 498), Laws of 1983 and RCW 46.61.515; amending section 1, chapter 5, Laws of 1973 as last amended by section 4, chapter ... (ESB 3106), Laws of 1983 and RCW 46.20.391; amending section 1, chapter 5, Laws of 1973 as last amended by section 23 of this act and RCW 46.20.391; amending section 442, chapter 249, Laws of 1909 and RCW 66.44.240;

APPENDIX “B”

Volume 2

STATUTES OF CALIFORNIA

AND DIGESTS OF MEASURES

1983

Constitution of 1879 as Amended

**General Laws, Amendments to the Codes, Resolutions,
and Constitutional Amendments passed by the
California Legislature**

**1983—84 Regular Session
1983—84 First Extraordinary Session**



Compiled by
BION M. GREGORY
Legislative Counsel

is found to be a ward or dependent child of the juvenile court until the ward or dependent child attains the age of 21 years, except as provided in subdivisions (b), (c), and (d).

(b) The court may retain jurisdiction over any person who is found to be a person described in Section 602 by reason of the commission of any of the offenses listed in subdivision (b) of Section 707 until that person attains the age of 25 years if the person was committed to the Department of the Youth Authority.

(c) The court shall not discharge any person from its jurisdiction who has been committed to the Department of the Youth Authority so long as the person remains under the jurisdiction of the Department of the Youth Authority, including periods of extended control ordered pursuant to Section 1800.

(d) The court may retain jurisdiction over any person described in Section 602 by reason of the commission of any of the offenses listed in subdivision (b) of Section 707 who has been confined in a state hospital or other appropriate public or private mental health facility pursuant to Section 702.3 until that person has attained the age of 25 years, unless the court which committed the person finds, after notice and hearing, that the person's sanity has been restored.

SEC. 2. Section 1777 is added to the Welfare and Institutions Code, to read:

1777. Any moneys received pursuant to the Federal Social Security Act by a ward who is incarcerated by the Youth Authority are liable for the reasonable costs of the ward's support and maintenance.

CHAPTER 937

An act to amend Sections 192 and 193 of the Penal Code, and to amend Section 23153 of, and to add Sections 13350.5 and 23156 to, the Vehicle Code, relating to crimes.

[Approved by Governor September 20, 1983. Filed with Secretary of State September 20, 1983.]

The people of the State of California do enact as follows:

SECTION 1. Section 192 of the Penal Code is amended to read:

192. Manslaughter is the unlawful killing of a human being without malice. It is of three kinds:

1. Voluntary—upon a sudden quarrel or heat of passion.

2. Involuntary—in the commission of an unlawful act, not amounting to felony; or in the commission of a lawful act which might produce death, in an unlawful manner, or without due caution and circumspection; provided that this subdivision shall not apply to acts committed in the driving of a vehicle.

3. Vehicular—

(a) Driving a vehicle, not involving drugs or alcohol and in the commission of an unlawful act, not amounting to felony, and with gross negligence; or driving a vehicle, not involving drugs or alcohol, and in the commission of a lawful act which might produce death, in an unlawful manner, and with gross negligence.

(b) Driving a vehicle, not involving drugs or alcohol, and in the commission of an unlawful act, not amounting to felony, but without gross negligence; or driving a vehicle, not involving drugs or alcohol, and in the commission of a lawful act which might produce death, in an unlawful manner, but without gross negligence.

(c) Driving a vehicle in violation of Section 23152 or 23153 of the Vehicle Code and in the commission of an unlawful act, not amounting to felony, and with gross negligence; or driving a vehicle in violation of Section 23152 or 23153 of the Vehicle Code and in the commission of a lawful act which might produce death, in an unlawful manner, and with gross negligence.

(d) Driving a vehicle in violation of Section 23152 or 23153 of the Vehicle Code and in the commission of an unlawful act, not amounting to felony, but without gross negligence; or driving a vehicle in violation of Section 23152 or 23153 of the Vehicle Code and in the commission of a lawful act which might produce death, in an unlawful manner, but without gross negligence.

This section shall not be construed as making any homicide in the driving of a vehicle punishable which is not a proximate result of the commission of an unlawful act, not amounting to felony, or of the commission of a lawful act which might produce death, in an unlawful manner.

"Gross negligence", as used in this section, shall not be construed as prohibiting or precluding a charge of murder under Section 188 upon facts exhibiting wantonness and a conscious disregard for life to support a finding of implied malice, or upon facts showing malice, consistent with the holding of the California Supreme Court in *People v. Watson* (1981) 30 Cal. 3d 290.

SEC. 2. Section 193 of the Penal Code is amended to read:

193. (a) Voluntary manslaughter is punishable by imprisonment in the state prison for two, four, or six years.

(b) Involuntary manslaughter is punishable by imprisonment in the state prison for two, three or four years.

(c) Vehicular manslaughter is punishable as follows:

(1) For a violation of paragraph (a) of subdivision 3 of Section 192, the punishment shall be either by imprisonment in the county jail for not more than one year or imprisonment in the state prison for two, four, or six years.

(2) For a violation of paragraph (b) of subdivision 3 of Section 192 the punishment shall be by imprisonment in the county jail for not more than one year.

(3) For a violation of paragraph (c) of subdivision 3 of Section 192, the punishment shall be by imprisonment in the state prison for four, six or eight years.

(4) For a violation of paragraph (d) of subdivision 3 of Section 192, the punishment shall be either by imprisonment in the county jail for not more than one year or by imprisonment in the state prison for 16 months, two, or four years.

SEC. 2.5. Section 193 of the Penal Code is amended to read:

193. (a) Voluntary manslaughter is punishable by imprisonment in the state prison for three, six, or 11 years.

(b) Involuntary manslaughter is punishable by imprisonment in the state prison for two, three or four years.

(c) Vehicular manslaughter is punishable as follows:

(1) For a violation of paragraph (a) of subdivision 3 of Section 192 the punishment shall be either by imprisonment in the county jail for not more than one year or by imprisonment in the state prison.

(2) For a violation of paragraph (b) of subdivision 3 of Section 192 the punishment shall be by imprisonment in the county jail for not more than one year.

(3) For a violation of paragraph (c) of subdivision 3 of Section 192, the punishment shall be by imprisonment in the state prison for four, six, or eight years.

(4) For a violation of paragraph (d) of subdivision 3 of Section 192, the punishment shall be either by imprisonment in the county jail for not more than one year or by imprisonment in the state prison for 16 months, two, or four years.

SEC. 3. Section 13350.5 is added to the Vehicle Code, to read:

13350.5. Notwithstanding Section 13350, for the purposes of this article, conviction of a violation of subdivision (c) or (d) of subsection 3 of Section 192 of the Penal Code is deemed to be a conviction of a violation of Section 23153.

SEC. 4. Section 23153 of the Vehicle Code is amended to read:

23153. (a) It is unlawful for any person, while under the influence of an alcoholic beverage or any drug, or under the combined influence of an alcoholic beverage and any drug, to drive a vehicle and, when so driving, do any act forbidden by law or neglect any duty imposed by law in the driving of the vehicle, which act or neglect proximately causes bodily injury to any person other than the driver.

(b) It is unlawful for any person, while having 0.10 percent or more, by weight, of alcohol in his or her blood to drive a vehicle and, when so driving, do any act forbidden by law or neglect any duty imposed by law in the driving of the vehicle, which act or neglect proximately causes bodily injury to any person other than the driver.

For purposes of this subdivision, percent, by weight, of alcohol shall be based upon grams of alcohol per 100 milliliters of blood.

In any prosecution under this subdivision, it is a rebuttable presumption that the person had 0.10 percent or more, by weight, of alcohol in his or her blood at the time of driving the vehicle if the person had 0.10 percent or more, by weight, of alcohol in his or her blood at the time of the performance of a chemical test within three hours after the driving.

(c) In proving the person neglected any duty imposed by law in the driving of the vehicle, it is not necessary to prove that any specific section of this code was violated.

SEC. 5. Section 23156 is added to the Vehicle Code, to read:

23156. For the purposes of this article, a prior offense which resulted in a conviction of a violation of subdivision (c) or (d) of subsection 3 of Section 192 of the Penal Code is a prior offense of a violation of Section 23153.

SEC. 6. Section 2.5 of this bill incorporates amendments to Section 193 of the Penal Code proposed by both this bill and AB 236. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1984, (2) each bill amends Section 193 of the Penal Code, and (3) this bill is enacted after AB 236, in which case Section 2 of this bill shall not become operative.

SEC. 7. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

CHAPTER 938

An act to amend Section 37 of, and to add Sections 340.3 and 1021.4 to, the Code of Civil Procedure, and to amend Sections 26820.4 and 72055 of, of the Government Code, relating to civil actions, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 20, 1983. Filed with
Secretary of State September 20, 1983.]

The people of the State of California do enact as follows:

SECTION 1. Section 37 of the Code of Civil Procedure is amended to read:

37. (a) A civil action shall be entitled to preference, if the action is one in which the plaintiff is seeking damages which were alleged to have been caused by the defendant during the commission of a felony offense for which the defendant has been criminally convicted.

(b) The court shall endeavor to try the action within 120 days of the grant of preference.

SEC. 2. Section 340.3 is added to the Code of Civil Procedure, to read:

340.3. Unless a longer period is prescribed for a specific action, in any action for damages against a defendant based upon such person's

PIERCE COUNTY PROSECUTOR

December 29, 2016 - 2:02 PM

Transmittal Letter

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